

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

COCA-COLA BOTTLING COMPANY OF
NORTHERN NEW ENGLAND, INC.

Employer¹

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 633, AFL-CIO

Petitioner

Case 1-RC-21836

DECISION AND DIRECTION OF ELECTION²

International Brotherhood of Teamsters, Local 633, AFL-CIO (Petitioner or Union) seeks to represent a unit of drivers and warehousemen employed by the Employer at its Belmont location. The Employer and the Petitioner agree that the unit should include all drivers and warehousemen and should exclude all clerical employees. The Employer takes the position that the unit should also include all account managers, chain account representatives, merchandisers, and cooler technicians. The Union wishes to exclude these employee classifications. I find that the account managers, chain account representatives, and merchandisers share such a community of interest with the drivers

¹ The name of the Employer appears as amended at hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

and warehousemen as to require their inclusion in the unit, but that the cooler technicians do not and, therefore, that they should be excluded from the unit found appropriate.

FACTS

The Chain of Command:

The Employer, which is headquartered in Bedford, New Hampshire, is in the business of bottling, warehousing, and distributing Coca-Cola products and other products. The Belmont location is a division of the Employer. The Employer's president is Wel Elmer. Reporting to Elmer are three vice presidents; Larry Lordi, sales and marketing; John Palermo, operations; and, Brian Rydell, the finance officer. Dave Packer is a state manager. Thomas Jones, the only witness to testify at this hearing, is a general manager and he reports to Packer. Jones works at Lakes Region Coca-Cola and is the senior company official at the Belmont location.³ All the managers working in Belmont report to Jones.⁴

There are 50-65 employees, including managers, working at the Belmont location. Bob Norton, the warehouse manager, oversees inventory, the receiving of product, the loading of the trucks, building orders,⁵ and building maintenance. Norton supervises eight employees. The distribution manager, Gary Anderson, oversees the dispatching of drivers. When Anderson arrives at 5:00 in the morning he first checks out the drivers, and then checks all the orders for the next day to make sure they are sold to the correct drivers. He also dispatches any orders that come in during the day to the driver going to the specific area where the order is to be sent. Anderson also manages the bulk deliveries as they come in and serves as the safety officer.

Jeff Daingle, the chain account merchandising manager, oversees the chain account representatives and the merchandisers. There are two sales managers, Tom Rock, who is responsible for home market accounts,⁶ and Mike Gibeault, the cold drink sales manager.⁷ There are also four district managers who may report to Jones or to the

³ The Lakes Region operation also includes two satellite operations which Jones oversees, one in Claremont, New Hampshire, and one in Gorham, New Hampshire.

⁴ The parties have stipulated, and I find that the following employees should be excluded from the bargaining unit as managers and/or supervisors: the office manager, warehouse manager, distribution manager, account merchandising manager, sales managers, and district managers.

⁵ This involves putting the orders together so that they are ready to be delivered.

⁶ This includes convenience stores, both chain and independent, drug stores, dollar stores, and small mass merchandisers.

⁷ This is primarily immediate consumption accounts; such as, restaurants, fast food accounts, hospitals, and similar entities.

sales managers. The district managers primarily sell end programs.⁸ The district managers also supervise account managers and drivers. They do not supervise chain representatives and do not often supervise merchandisers.

Donna Merrill, the office manager, supervises the four office employees.⁹ The office employees engage in various tasks, including prepping the handheld computers used by the drivers and account managers.

The Unit Employees:

Drivers

There are 22 drivers working out of the Belmont facility, including the two spare drivers mentioned below.¹⁰ Drivers report to the sales and district managers. As mentioned above, the distribution manager, Gary Anderson, also appears to have a role in supervising the drivers, since Anderson oversees the dispatching of drivers. It is Anderson's responsibility to check out the drivers in the morning, as well as to check all the orders for the next day to make sure they are sold to the correct drivers. Thus, even though Jones did not testify that Anderson supervises the drivers, it does appear that he has some driver supervisory role.¹¹ The drivers are assigned specific territories, so that they are assigned specific account managers or salesmen.

There are two drivers in Belmont who deliver exclusively to bulk accounts. Bulk accounts are the large accounts, typically sold by the chain account representatives, where the driver simply drops off the product at the account (i.e., at the customer's location). There are about 10 drivers who may make bulk deliveries on some days, but on other days are considered route drivers, who deliver to the smaller accounts. There are about 10 drivers who do not make any bulk deliveries. A driver typically comes to the Belmont location, punches in, and gets his handheld computer, which will list all the stops for the day. The invoicing is all loaded into the handheld computer. The driver does not interact with supervision at this point, as Anderson has already verified that the

⁸ These are packages designed to maximize sales.

⁹ The parties agreed that the office employees should be excluded from the bargaining unit.

¹⁰ It appears that about 10 of the current drivers started working for the Employer as merchandisers.

¹¹ Although it failed to present any evidence on the drivers' supervision, in its post-hearing brief the Union questions the Employer's claim that the drivers report to district and sales managers and asserts that the drivers, in fact, report to the distribution manager.

sale was dispatched to the correct handheld computer. Route drivers deliver the product, merchandise the product,¹² organize the back stock, hang point of sale material,¹³ return empties, settle the account,¹⁴ and fill coolers and displays. When a driver is merchandising, he is performing the same tasks that the account managers, chain representatives, and merchandisers perform.

The driver job description, which lists the position as “driver/merchandiser,” notes the position’s primary function as follows: “To drive loaded vehicle over established routes to perform one or more soft drink distribution functions. May be responsible for merchandising as well as “drop off” delivery.” The jobs listed under “Essential Tasks” include “Deliver product and provide customer service;” “Help maintain rotation and product standards in accounts;” “Reconcile vehicle inventory, invoices and some payments;” and, “Maintain active communication with customer and account rep.” The description also includes a chart of physical demands, which indicates that the driver is driving in a delivery truck 67-100% of his time. Jones testified that a driver spends 60%, or probably more than half of his time, at the account.

It is part of the driver’s routine to meet with the account manager in the morning to review the notes the account manager leaves on a form for the driver. These notes concern what the account manager saw at the account, any out of the ordinary prices, and things of that nature. There is no other reason that a driver would interact with the account manager during the day, unless there was a problem the driver needed to communicate to the account manager.¹⁵ Drivers do not meet with chain account representatives. Drivers are not at accounts on the same day as other employees, unless it is a seasonal situation, as discussed below, when others, typically a merchandiser, rides with the driver to help merchandise the account, deliver or bring the product into the account, and organize the back stock.

Drivers are required to have two commercial driver’s licenses (CDL A and B). One is a tractor trailer license, and the other is for a regular six-wheeled type vehicle.

There are 10 drivers that drive four days of the week and work as merchandisers on one of the weekend days. They are on a flex workweek. This is a function of volume and work and is the way the Employer can avoid layoffs. While in previous years this was a seasonal schedule, this year it has been a year round schedule.

¹² Merchandising essentially involves rotating the stock, straightening out the shelf on which the stock is displayed, and reorganizing the back stock.

¹³ Point of sale material includes items such as static cling stickers that are put on carton coolers, identifying new packages, prices or promotions, and shelf or pole signs. Outside point of sale material includes banners.

¹⁴ Drivers collect money at accounts, which is something account managers also do. Chain account representatives rarely collect money, however.

¹⁵ The record does not indicate how often this may happen.

Warehouse Employees

Bob Norton, the warehouse manager, supervises the warehouse employees. There are three loaders and four builders working in the warehouse. The builders are the employees who build the orders – put the orders together to be delivered the next day. The loaders are the employees who load those orders onto the trucks. A warehouse employee named Templeton is the night foreman.¹⁶ Templeton checks the trucks, receives the LSSC loads, preps the handheld computers for the next day, and closes down the building. Templeton does not do building work, but sometimes does loading work. If Templeton is unavailable to check in the trucks, Benny Gagne, Gary Anderson or Bob Norton can do it.

Norton prints the warehouse assignments each morning and he puts the orders in a stack on a table by the wrap machine. The warehousemen then go through the pile of orders.

The warehousemen wear the same uniforms as everyone but the account managers, though in the winter they wear sweatshirts because it is cold in the warehouse building.

The Classifications in Issue:

Account Managers

There are seven account managers employed at the Belmont facility.¹⁷ The account managers are each assigned a region for which they are responsible. Apparently, each account manager knows which accounts to visit during the day from his handheld computer that is loaded with his assigned group of accounts and the order in which he is to call on them. The job description provides that the account managers report directly to the district managers.

At an account, the account manager merchandises,¹⁸ so that there is still product on the shelf until additional product is delivered by the driver 48 hours later. The account manager's job is to face items off, check rotation for freshness, and organize the back stock to the point where he can take an accurate order from the customer for additional

¹⁶ The Union stated that it did not believe Templeton was a supervisor, so he should be included in the bargaining unit. The Employer did not offer a position. The evidence in the record indicates that Templeton is not a statutory supervisor and I find that he is not one, and should be included in the bargaining unit.

¹⁷ One of the 7 is a spare account manager, Dennis Bolduc, who covers the other account managers' vacations.

¹⁸ The merchandise function performed by the account managers and other employees is the same function -- the only difference is the amount of time spent doing it.

product.¹⁹ The account manager is responsible for all in-store selling, merchandising, execution of programs, pricing, point of sale material, and product rotation/freshness. The driver is responsible for setting up/building displays for product, while the account managers just fill the display, as opposed to building it.

The account manager's job description includes ten duties, reflecting the combination of sales and merchandising tasks that are included in the job.²⁰ The job description also states that account managers should "build personal selling ability by participating in the sales training programs both in the plant and in the field." All of an account manager's time, other than driving, is spent at his various accounts. Approximately 50% of the time spent at these accounts is devoted to merchandizing. There are about three times a week when an account manager may deliver product. This could happen if, for example, a driver made a mistake in a delivery and the account calls the Employer, knowing they are not going to get their next regular delivery for another two or three days, and asks the account manager to bring them a case of Coke.

Account managers wear a salesperson's uniform not worn by any other employees, which consists of white or gray shirts with ties and gray or tan issued slacks. In the summer, account managers do not have to wear ties. On Fridays, account managers are allowed to wear golf shirts with an Employer logo.

There is one driver, George Clark, who has a dual role working at the Employer. He is considered the seasonal salesman. During the period from January through the first week of April, Clark works three days a week as an account manager and two days as a driver. During the month of April, he adds one more account manager day and only drives one day. From May through September, Clark works full-time as an account manager. From mid-September through mid-October, Clark rolls back to working four days as an account manager and then, once the season is closed as of the week after Columbus Day, he is back working three days as an account manager and driving for two days. This has been Clark's schedule for the last two or three years.

Two of the current account managers previously worked as chain account managers, three worked as drivers, and one worked in the office.²¹

¹⁹ The record does not specifically describe what these three functions involve, but the meaning of the terms seems fairly obvious.

²⁰ There is no longer any requirement that account managers have a current CDL/Class A driver's license.

²¹ Jones also testified that all but one of the account managers had previously been drivers and, of those, four were drivers immediately before they became account managers. Of those four, one did not have to apply for the position, since he dates back to the "drivers sell" system in place years ago, whereby the driver went out with a loaded truck, visited the account, took the order, went out to the truck, and brought the order in. When the Employer changed from that system, it offered the drivers the account manager positions. That was about 10 to 15 years ago, when the company went from a drivers sell situation to an advance sell system, where the order is taken by the account manager and the product is delivered by the driver.

Chain Account Representatives

There are five chain account representatives working at the Belmont facility, who report to Jeff Daingle, the chain account merchandising manager. Each chain account representative has a regionalized territory, much like the account managers, that includes four or five accounts. The chain account representatives sell product to the larger stores, such as Shaw's, Wal-Mart, and Shop & Save.

The chain account representatives visit the larger stores every day and they visit the independent stores three or four times a week. At the store locations, the chain account representative sells the product for the next delivery day and merchandises the account. The chain account representatives' routine is to go right to the shelf where the product is displayed in order to organize it, check the rotation, and clock it off so they can tell how much product they need to get from the back room to put on the shelf. They then go to the back room, bring product out, and load the shelves. This routine is the same as the account managers', merchandisers', and drivers' routines when they merchandise. In making the order, the chain account representative looks at the inventory on the shelves and in the back room and then determines how much product is needed. The chain account representative spends about 10% of his day taking the order. The selling at the chains is limited to that, though the chain account representatives may engage in more selling with the independents. The chain account representative job description is exactly the same as the account manager job description, except that the chain account representatives report to Jeff Daingle, the chain account merchandising manager, and the Employer prefers that chain account representatives have a current CDL Class A license. The reason provided for this preference is because there are times when chain account representatives have been asked to deliver product.²²

Chain account representatives wear the employee uniform that all the employees at issue here, except for the account managers, wear. The uniform is a light gray shirt with red pin stripes and dark gray pants. The pants and shirt have Coca-Cola logos.

There are two spare drivers that fill in for vacationing chain account representatives. Much of their time in the winter is spent covering vacations, since the vacations the chain account representatives take can range from two to four weeks, and all those weeks would be covered by the two spare drivers. In the summer, the spare drivers are needed to perform deliveries for seasonal accounts, so during the season, the chain account representatives' vacations are covered by merchandisers. The spare drivers do not generally cover unscheduled chain account representative absences, since they are too busy covering vacations. All but one of the current chain account representatives were previously drivers.

²² It is not clear how often this occurs.

Merchandisers

There are four merchandisers employed at the Belmont location, but they all work out of their homes.²³ The merchandisers' essential function is to fill the displays, face off the shelves, and rotate the product in the supermarkets. Each merchandiser is assigned 4 or 5 accounts, similar to the chain account representatives. The merchandiser job description is for part time stockers and states as the primary function "Stock shelves and merchandise product at one or more locations." The "Essential Tasks" include "Move or transport product from storage to display. Store articles in bins, floor, cooler or shelves according to identifying information (brand, style, size, type of material)." The job description further states that the merchandisers will be required to use their own vehicles both to and from the various job assignments. Merchandisers are considered at work and on the payroll when they leave their homes each day and finished with work 15 minutes after their last account is serviced.

As mentioned above, merchandisers work out of their homes and because of this, they are generally not required to come into the Belmont facility or to punch a time clock. Merchandisers get their schedules from their supervisor, Daingle, on a weekly basis and if not on a weekly basis, Daingle calls them. Merchandisers are the only employees who are required to use their own cars. During the summer months, there are times when merchandisers will go to an account with a driver. When this happens, they are considered seasonal employees. During those times, there are occasions when merchandisers will report to Belmont and punch the time-clock.

A merchandiser does not take stock orders, but otherwise shares the same duties as a chain account representative. Also, on occasion, on weekends and Fridays, when a chain account representative may have too much work, a merchandiser will periodically work in the larger stores performing merchandising. There were no specific examples of this provided in the record and no mention of how often this occurs. The uniform the merchandisers wear is the same as all other employees in issue except for the account managers.

Cooler Technicians

There are five cooler technicians working in Belmont. The cooler technicians maintain equipment physically located at the accounts.²⁴ Greg O'Neil, one of the five, is the working foreman who manages them. O'Neil oversees how the work is assigned to make sure nobody gets overburdened.

The cooler technicians basically receive training on the job. Their only specialized training is in refrigeration, which, though not required, is encouraged. The

²³ Merchandisers are also known as stockers.

²⁴ The equipment includes carton coolers, vending machines, and fountain equipment.

training requires the technicians to read a book and then an individual comes into the facility and gives them a test to qualify them.

The cooler technicians wear the same uniforms as the rest of the employees at issue, except for the account managers.

Hours and Place of Work:

With the exception of the merchandisers, all of the employees discussed above report to the Belmont location. The warehouse employees work in Belmont, while the rest of the employees spend much of the day at various accounts. Different employees are not at the same account on the same day, except in the summer months, when merchandisers may ride with a driver.

The account managers arrive for work at 7:00 in the morning and leave anywhere from 3:00 to 5:30 or 6:00 pm. The chain account representatives appear to start work between 5:00 and 6:00 a.m. and return to Belmont in mid afternoon. The bulk drivers report between 5:00 and 6:00 a.m., while the route drivers report at 7:00 a.m. The drivers are scheduled for eight-hour shifts, but work until the job is done. The cooler technicians come in at 8:00 a.m. and also generally work an eight-hour shift. Finally, the loaders in the warehouse work from 3:00 a.m. until about 11:30 a.m., while the builders report at 8:00 a.m. for an eight-hour shift. As previously mentioned, the merchandisers are part-time employees and work out of their homes.

Benefits and Compensation:

While there is no employee handbook, there is an employee benefits handbook.²⁵ While the Employer extends its benefits to all employees, subject to qualification standards, none of the merchandisers qualify, since they are part-time employees.

Account managers and chain account representatives are salaried employees, who can also earn a quarterly bonus. The account managers' salaries range from \$700 to \$1,000 a week. The chain account representatives' salaries range from \$650 to \$850 a week. The bonus available to these employees is related to their selling role. For an account manager, the more product an account manager can convince a customer to purchase, and the higher margin²⁶ product they can convince a customer to purchase, the larger the bonus. For a chain account representative, their bonus is based on branch sales and a portion of it is based on their personal sales.²⁷ The bonus for both of these sales positions is a maximum of \$1,000 a quarter.

²⁵ This handbook is not in evidence.

²⁶ If an account manager can convince a customer to sell a product that has a higher profit margin than other products, his bonus is increased.

²⁷ The total Lakes Region is included in branch sales.

The drivers, warehousemen, merchandisers, and cooler technician employees are not eligible for the bonus. These employees are all paid hourly. The drivers' pay is in the range of \$15 to \$23 an hour. The cooler technicians' pay is in the range of \$13 to \$20 an hour. The warehousemen's pay is in the range of \$13 to \$22 an hour. Finally, the merchandisers are paid \$10 to \$12.50 an hour.

The account managers, chain account representatives, and merchandisers are not eligible to earn overtime, while the drivers, cooler technicians, and warehousemen are eligible.²⁸

ANALYSIS

The Appropriate Unit:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Bartlett Collins Co.*;²⁹ *Overnite Transportation Co.*;³⁰ *NLRB v. Lake County Assn. for the Retarded*.³¹ The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*;³² and *State Farm Mutual Automobile Insurance Co.*³³ In determining whether the employees possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*.³⁴ It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage Co.*³⁵

²⁸ The merchandisers can, however, earn overtime when they are working as seasonal employees.

²⁹ 334 NLRB No. 76 (2001).

³⁰ 331 NLRB No. 85 slip op. at 2 (2000).

³¹ 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

³² 327 NLRB 531 (1999).

³³ 163 NLRB 677 (1967).

³⁴ 313 NLRB 1016 (1994).

³⁵ 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir.1951).

In this case, I find that the petitioned for employees share such a substantial community of interest with the account managers, the chain account representatives, and the merchandisers, that these three classifications of employees must be included in the unit. The strongest evidence pointing to this conclusion is the frequency of interchange between classifications. With respect to the drivers, at least 10 of the 22 work a flex workweek, where they work four days as a driver and one day a week as a merchandiser. While this schedule is a function of the volume of work, this past year it was a year round schedule. Two of the 22 drivers are spare drivers who spend at least some of the winter months doing chain account representative work, and one of the drivers works part of the week as an account manager and part of the week as a driver. Additionally, there are occasions when the merchandisers work as chain account representatives. I find this level of interchange to be very significant. See *United Rentals, Inc.*,³⁶ where evidence of overlapping duties and interchange between the petitioned for unit and the employees not being sought by the petitioner required that the employees not being sought be included in the bargaining unit.

As in *United Rentals, Inc.*, the other strong factor indicating that the petitioned-for unit here is inappropriate is the level of overlapping duties shared by the employees. For example, the drivers spend at least some of every day in accounts, performing the same exact duties as the three other classifications of employees who perform work in the accounts. Contrast, *Home Depot USA, Inc.*,³⁷ where the shared duties between unit and excluded employees were performed randomly and were incidental to the drivers' primary job function of operating the delivery trucks, preparing for deliveries, and making deliveries. Here, the un rebutted evidence was that only two drivers are exclusively engaged in delivering product, whereas the rest of the drivers are assigned other duties and spend a significant amount of time performing work in the accounts, doing merchandising and setting up sales material, in much, if not exactly, the same way as the other employees. Additionally, the chain account representatives, for whom a CDL Class A license is preferred,³⁸ occasionally deliver product, and account managers also regularly deliver product, though on a much smaller scale.

Regarding functional integration, this evidence also supports including the account managers, chain account representatives, and merchandisers in the bargaining unit. The Employer assigns sales employees and drivers a regionalized geographic territory. The account managers, chain account representatives, and merchandisers, together with the drivers, keep the accounts orderly when they merchandise in the accounts on different days. Also, the driver builds the displays that the account manager then fills. Additionally, the coordination between the driver and the account manager on the accounts is not only clear by inference, since the account manager orders the product

³⁶ 341 NLRB No. 72, sl. op. (2004).

³⁷ 331 NLRB 1289 (2000).

³⁸ Since many of the chain account representatives were formerly drivers, presumably they have the CDL license.

48 hours before the driver fills the order, but also by the fact that the account manager and driver meet daily to review the account manager's notes on the account. In season, the merchandiser travels with the driver to an account and works at the account with the driver. While there was little evidence of contact between these employees other than that described above, the evidence shows that in many cases the employees report to the Employer's premises at around the same time.

Regarding supervision of the employees in question, it appears that the account managers and the drivers share at least some common supervision, as the unrebutted testimony indicates that both positions report to the district managers, even if the distribution manager has some role in dealing with the drivers. The chain account representatives and the merchandisers report to the same supervisor, the chain account merchandising manager.

Regarding the question of wages and benefits, there were some differences here between the different employee classifications, but not enough to outweigh the factors mentioned above. The employees in the petitioned for unit and all of the other employees share the same benefits, except for the merchandisers, who do not receive any benefits because they work part-time. All of the employees, except for the merchandisers, earn compensation in the same general range. There is a difference here, however, since the account managers and chain account representatives are salaried, cannot earn overtime, and can earn a quarterly bonus based on sales' performance.³⁹ Despite this difference in structure, the pay earned by all the employees in question, with the exception of the merchandisers, is still within the same range and, with the exception of the merchandisers, these employees all receive the same benefits.

The remaining evidence reflecting the substantial community of interest between the classifications is the fact that employees generally work themselves up through the ranks of the classifications. It appears the general employment track at the Employer is to start as a merchandiser, work as a driver, and then as a chain account representative or as an account manager. Finally, all employees, except for the account managers, wear the same uniform.

Cooler Technicians:

With respect to the cooler technicians, it is true that they perform work at the account locations and wear the same uniforms as most of the other unit employees. Nevertheless, there is no evidence of interchange or overlapping of duties between them and the classifications I have included in the unit found appropriate. Rather, they have

³⁹ I do not find the Union's argument that because the Union may find a conflict concerning the bonuses, since drivers do not earn bonus money when they substitute for sales employees, while sales employees are credited for amounts sold while on vacation, the Union would be in an untenable position. These kinds of situations come up in representing different classifications of employees and it will be up to the Union to decide whether to seek to keep the status quo or to propose something different.

their own supervisor, their own training, and specialized work that does not involve the functional integration that the other classifications share. Under these circumstances, I have excluded them from the unit found appropriate. See *Coca-Cola Bottling Company of Baltimore*.⁴⁰

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, warehousemen, account managers, chain account representatives, and merchandisers employed by the Employer at its Belmont, New Hampshire location, but excluding cooler technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 633, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate

⁴⁰ 156 NLRB 450 (1965).

with them. *Excelsior Underwear, Inc.*,⁴¹ *NLRB v. Wyman-Gordon Co.*⁴² Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.⁴³ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before December 3, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 10, 2004.

/s/ Elizabeth A. Gemperline

Elizabeth A. Gemperline, Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 26th day of November 2004.

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⁴¹ 156 NLRB 1236 (1966).

⁴² 394 U.S. 759 (1969).

⁴³ 315 NLRB 359 (1994).